

continue the hearing from day to day or adjourn such hearing to a later date or to a different place by announcement at the hearing or by other appropriate notice. When determining whether to grant a continuance, the Administrative Law Judge gives careful consideration to the future availability of witnesses, the schedule of the vessel or vessels on which the respondent and/or witnesses may be employed, and to the nature of the charge and gravity of the offense.

#### **§ 5.513 Appearances.**

The appearances of the investigating officer and respondent and their representatives are entered in the record.

#### **§ 5.515 Failure of respondent to appear at hearing.**

(a) In any case in which the respondent, after being duly served with the original of the notice of the time and place of the hearing and the charges and specifications, fails to appear at the time and place specified for the hearing, the hearing may be conducted *in absentia*.

(b) The Administrative Law Judge ensures that the record contains the facts concerning the service of the charges, specifications and notice of hearing.

#### **§ 5.517 Witnesses excluded from hearing room.**

After appearances are entered and prior to proceeding with the hearing, all witnesses are excluded from the hearing room. The Administrative Law Judge may order witnesses to be separated from each other while waiting to testify or admonish them to not discuss the case among themselves or with any other person, with the exception of the investigating officer, the respondent or the respondent's counsel.

#### **§ 5.519 Rights of respondent.**

(a) The Administrative Law Judge advises the respondent, on the record, of the right to:

- (1) Be represented by professional counsel, or any other person desired;
- (2) Have witnesses and relevant evidence subpoenaed;

(3) Examine witnesses, cross-examine witnesses, and introduce relevant evidence into the record; and

(4) Testify or remain silent.

#### **§ 5.521 Verification of license, certificate or document.**

(a) The Administrative Law Judge shall require the respondent to produce and present at the opening of the hearing, and on each day the hearing is in session thereafter, all valid licenses, certificates, and/or documents issued by the Coast Guard to the respondent. In the event that the respondent alleges that such license, certificate or document has been lost, misplaced, stolen, destroyed, or is otherwise beyond his ability to produce, the respondent shall execute a lost document affidavit (Form CG-4363). The Administrative Law Judge shall warn the respondent that a willful misstatement of any material item in such affidavit is punishable as a violation of a federal criminal statute. (See 18 U.S.C. 1001).

(b) When a hearing is continued or delayed, the Administrative Law Judge returns the license, certificate, or document to the respondent: unless a prima facie case has been established that the respondent committed an act or offense which shows that the respondent's service on a vessel would constitute a definite danger to public health, interest or safety at sea.

#### **§ 5.523 Motions or objections.**

Any motion or objection shall be heard and disposed of, on the record, by the Administrative Law Judge.

#### **§ 5.525 Correction or amendment of charges and/or specifications.**

(a) The Administrative Law Judge examines the charges and specifications to determine their correctness as to form and legal sufficiency.

(b) The Administrative Law Judge may, either on the Administrative Law Judge's own motion or motion by either the investigating officer or respondent, amend the charges and specifications to correct harmless errors by deletion or substitution of words or figures as long as a legal charge and specification remains.

(c) When errors of substance are found in charges and specifications, the

Administrative Law Judge shall allow that the defective charge or specification be withdrawn without prejudice to the service of a new charge and specification in the matter. The investigating officer may then prepare and serve a new charge and specification.

**§ 5.527 Answer.**

(a) The Administrative Law Judge reads each charge and specification to the respondent and obtains a specific answer to each charge and specification. If the respondent fails to answer a charge or specification, the Administrative Law Judge enters a denial and proceeds with the hearing.

(b) A specific answer shall be one of the following:

- (1) Deny;
- (2) No contest; or
- (3) Admit.

(c) For purposes of proceedings under this part, an admission or *no contest* answer is sufficient to support a finding of *proved* by the Administrative Law Judge.

(d) When the hearing is conducted *in absentia*, the Administrative Law Judge enters a denial to all charges and specifications.

**§ 5.529 Opening statement of investigating officer.**

(a) If a denial is entered, the investigating officer makes a brief statement outlining the matters expected to be proved.

(b) If the respondent admits the truth of the charges and specifications or answers *no contest*, the opening statement of the investigating officer shall contain a summary of the evidence upon which the charges and specifications are based.

**§ 5.531 Opening statement by or on behalf of the respondent.**

The respondent or the respondent's counsel is afforded an opportunity to state what is intended to be established. This may be waived or deferred at the option of the respondent.

**§ 5.533 Presentation of case where there is an admission or no contest answer.**

(a) If the respondent admits to any charge and specification or answers *no*

*contest*, evidence in mitigation may be presented, and the investigating officer may present a *prima facie* case and evidence in aggravation even in those cases where revocation is mandatory.

(b) Should the respondent's presentation be inconsistent with an admission or answer of *no contest*, the Administrative Law Judge will reject the answer, enter a denial and continue with the hearing.

**§ 5.535 Witnesses.**

(a) All witnesses are sworn, duly examined, and may be cross examined. A witness on the stand may be questioned at any time by the Administrative Law Judge.

(b) The person who calls a witness shall begin direct examination by identifying the witness.

(c) Witnesses may be called to establish matters of aggravation or matters of mitigation.

(d) Any witness may have the benefit and advice of personal counsel, but such counsel shall not otherwise participate in the hearing.

(e) Any attempt to coerce or induce a witness to testify falsely is an offense under federal law which may be punishable by fine or imprisonment or both. (See 18 U.S.C. 1505.)

(f) Upon motion by the investigating officer or respondent, the Administrative Law Judge may order that testimony of a witness be taken by telephone conference call, when testimony would otherwise be taken by deposition. The telephone conference will be arranged so that all participants can listen to and speak to each other in the hearing of the Administrative Law Judge. The Administrative Law Judge insures that all participants in the telephone conference are properly identified to allow a proper record to be made by the reporter. Participants shall speak clearly and avoid extraneous conversation. Telephone conferences are governed by the procedural rules and decorum observed during in-person proceedings.

(g) A witness may be subpoenaed to testify by telephone conference. The subpoena in such instances is issued under the procedures in subpart F.